

**REMARKS****Status of Claims**

The Office Action mailed May 26, 2009, has been reviewed and these comments are responsive thereto. Claims 5 and 11 have been amended and new claims 24 and 25 have been added. Upon entry of this Amendment, claims 1-12, and 18-25 will be pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

**Claim Rejection Under 35 U.S.C. § 103**

Claims 1, 4, 5, 7, 10, 11 and 18-21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McClard (US Patent 6,438,752 B1, “McClard”) in view of Wang et al. (US Patent Application Publication 2003/0028871, “Wang”), in view of Knee et al. (US Patent Application Publication 2002/0095676, “Knee”), and further in view of Klarfeld et al. (US Patent Application Publication 2003/0067554, “Klarfeld”). Applicant traverses this rejection.

Claim 1 recites, among other features, determining a plurality of demographic profiles based on the second set, wherein each demographic profile corresponds to a different user, as determined by different behavior peaks indicated by the second set. None of the cited references teaches or suggests these features.

The Office relies on Klarfeld as teaching this feature. However, there is no teaching or suggestion in Klarfeld of determining a plurality of demographic profiles as determined by different behavior peaks indicated by the second set. Instead, Klarfeld, at most, describes analyzing user action history to create multiple profiles. Analyzing user history as described in Klarfeld does not constitute determining profiles based on behavior peaks as recited in the claim.

In the Response to Arguments, the Office misrepresents Applicant’s remarks regarding Klarfeld. The Office states, at p. 2 of the Office Action, that “Applicant’s assertion that Klarfeld does not teach [each demographic profile corresponds to a different user] because only user actions that occur contiguously are grouped together by Klarfeld is immaterial to the rejection as there is no claim language dealing with contiguous or non-contiguous user actions.” In the

response to Office Action filed March 12, 2009, Applicant's remarks noted not that Klarfeld failed to teach or suggest each demographic profile corresponds to a different user but rather that "Klarfeld does not disclose using behavior peaks to determine multiple demographics, see paragraph 230. Klarfeld discloses determining usage patterns only grouping user actions together if the user actions occur contiguously. See paragraph 231." See Applicant's Response with RCE filed March 12, 2009 at p. 8. Thus, the grouping of contiguous actions in Klarfeld clearly does not constitute determining profiles based on behavior *peaks* as recited in claim 1.

For at least these reasons, Applicant respectfully submits that claim 1 is allowable over the cited combination of references.

Independent claim 7 recites language similar to claim 1 and is allowable for at least the same reasons as discussed above with respect to claim 1 and further in view of the additional novel and non-obvious features recited therein.

Claims 4, 5, 18, and 20 depend from claim 1, and claims 10, 11, 19 and 21 depend from claim 7, and are thus allowable for at least the same reasons as their base claims and further in view of the additional novel and non-obvious features recited therein. For instance, claims 5 and 11 recite, among other features, removing a category from the second set in response to the broadcasted program viewing device not being tuned, for a period of time at least equal to a second predetermined threshold, to at least one broadcasted program predetermined to be in the category from the second set. The Office relies on Knee as teaching this feature. However, there is no teaching or suggestion in Knee, or the other cited references, of removing a category from the second set as recited in claims 5 and 11. At most, Knee describes "'refreshing' the values of the demographic categories for the user on a periodic basis, such as every seven days, or based on a specified number of user inputs." See para [0044] (emphasis added). However, there is no teaching or suggestion removing a category from the second set in response to the broadcasted program viewing device not being tuned, for a period of time at least equal to a second predetermined threshold, as recited in claims 5 and 11. Accordingly, for at least this additional reason, claims 5 and 11 are allowable over the cited combination of references.

Claims 2, 3, 8 and 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McClard in view of Wang, in view of Knee further in view of Klarfeld as applied to claims 1 and 7 above, and further in view of Ellis et al. (US Patent Application Publication 2003/0020744), herein Ellis. Applicant traverses this rejection.

Claims 2 and 3 and 8 and 9 depend from claims 1 and 7, respectively, and are allowable for at least the same reasons as discussed above with respect to claims 1 and 7. The addition of Ellis fails to cure the deficiencies of McClard, Wang, Knee and Klarfeld and thus, Applicant submits that claims 2, 3, 8 and 9 are patentably distinct from the cited combination of references.

Claims 6 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McClard in view of Wang, in view of Knee further in view of Klarfeld as applied to claims 1 and 7 above, and further in view of Schaffer et al. (US Patent Application Publication 2002/0104087), herein Schaffer. Applicant traverses this rejection.

Claims 6 and 12 recite, among other features, verifying with a viewer the adding of the category from the first set to the second set. The Office appears to rely on Schaffer as teaching this feature. However, Schaffer merely describes a user providing feedback on ratings and/or scores for a program being watched. *See* para [0048]. However, there is no teaching or suggestion in Schaffer of verifying with a viewer the adding of the category from the first set to the second set, as recited in the claims.

In the Response to Arguments, the Office “notes that this is not the limitation that Schaffer is indicated as teaching. Schaffer is merely being cited to teach user verification of profile changes. The addition of a category to a second set is disclosed by McClard.” The Office Action at p. 2-3. First, Applicant notes that user verification of profile changes is not recited in the claims. Instead, the claims recite verifying with a viewer the adding of a category from the first set to the second set. Even assuming, without conceding, that Schaffer describes user verification of profile changes, there is no teaching in Schaffer, McClard or any of the cited references of verifying with a viewer the adding of the category, and the Office has failed to identify any portion of any of the cited references that describes this feature. Accordingly, Applicant respectfully submits that claims 6 and 12 are allowable over the cited references.

**New Claims**

New claims 24 and 25 have been added. Support for these new claims can be found throughout the originally filed specification, claims and figures. Claims 24 and 25 depend from claims 1 and 7, respectively, and are allowable for at least the same reasons as their base claims and further in view of the additional novel and non-obvious features recited therein.

**Conclusion**

All rejections having been addressed, Applicant respectfully requests entry of the present amendment and notification of allowance. If any fees are due, or if an overpayment has been made, the Director is authorized to debit or credit Deposit Account No. 19-0733. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

Date: August 26, 2009

By: /Elizabeth A. Almeter/  
Elizabeth A. Almeter  
Registration No. 57,019  
BANNER & WITCOFF, LTD.  
1100 13<sup>th</sup> Street, NW  
Washington, DC 20005  
Telephone: 202-824-3000  
Fax: 202-824-3001